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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,553	08/17/2001	James E. Hebert	P6263	3908
81505 7590 04/16/2009 Sun Microsystems, Inc c/o Marsh Fischmann & Breyfogle LLP 8055 East Tufts Avenue Suite 450 Denver, CO 80237			EXAMINER JUNTIMA, NITTAYA	
			ART UNIT 2416	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES E. HERBERT

Application 09/932,553
Technology Center 2400

Mailed: April 16, 2009

Before HARRY HORTON, *Paralegal Specialist*.
HORTON, *Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 9, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section 1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Ed., Rev. 7, July 2008) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

(8) *Evidence Relied Upon.* A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed April 10, 2006 is deficient because the "Evidence Relied Upon" section fails to include the references:

Tosey (US Patent 6,392,990 B1);
Liu (US Patent 6,243,838 B1); and
AAPA (Appellant's Admitted Prior Art)

cited on pages 3 through 9 in the Examiner's Answer's Grounds of Rejection of claims 1-15 under 35 U.S.C. § 103(a). Correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner:

1) to vacate the Examiner's Answer mailed April 10, 2006;

2) to generate a revised Examiner's Answer correctly setting forth the Evidence Relied Upon section and to correct other sections of the Answer as may be required; and

3) to include the approval of the TC Director or his/her designee (as may be required for any new grounds of rejection); and

4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

hh

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